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BEFORE THE ARIZONA CORPORATION COMMISSION

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JIM IRVIN

Chairman

TONY WEST

Commissioner

CARL J. KUNASEK

Commissioner

Arizona Corporation Commission

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Docket No. T-00000B-97-0238

IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF
1996

U S WEST COMMUNICATIONS,
INC.'S MOTION FOR IMMEDIATE
IMPLEMENTATION OF
PROCEDURAL ORDER

U S WEST hereby moves this Commission for an Order adopting the attached Procedural Order for the remainder of this docket. U S WEST proposes a schedule that accounts for the uniqueness of the 271 process, while simultaneously moves the process quickly as envisioned by Congress. Moreover, U S WEST's experience in earlier 271 cases shows that the proposed schedule will accommodate the expected discovery with maximum efficiency and minimum unnecessary work. Thus, U S WEST asks this Commission to sign immediately the attached Order.

I. INTRODUCTION

On this date under separate cover, U S WEST files its Notice of Section 271 Application so that it may become an interLATA provider in the state of Arizona. Section 271 of the Act contains four principal components: (1) evidence under "Track A" showing the presence of a facilities-based competitor in the state; (2) satisfaction of the 14-point checklist; (3) evidence that

1 U S WEST will provide interLATA services pursuant to Section 272 of the Act once it receives
2 271 authority; and (4) evidence that U S WEST's entry into the interLATA market will be in the
3 public interest.

4 Although the FCC will ultimately determine whether or not to grant U S WEST's 271
5 Application, this Commission has a critical role in the 271 process. First, the express language
6 of Section 271 requires the FCC to consult with this Commission about its views before granting
7 or denying U S WEST's Application. Second, the FCC itself recognizes that state commissions
8 are better positioned to develop a full factual record, which is so critical to this process. Both of
9 these important roles drive this somewhat unique request. In order to develop a full factual
10 record on all phases of Section 271 for both the FCC and this Commission; in order to uncover
11 any bias or attempts by intervenors to protect their marketshare in Arizona's billion dollar per
12 year interLATA market; in order to identify the processes and procedures that are truly necessary
13 here in Arizona to open the local markets to competition; in order to identify CLEC current and
14 projected demand for each checklist item; and in order to fully assess whether U S WEST has
15 satisfied each aspect of Section 271, the Commission must recognize that – much as a traditional
16 civil case – broad discovery is warranted and essential to these contentious cases.

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19 **II. U S WEST's 271 EXPERIENCE**

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21 U S WEST's filed its first 271 Application in the state of Montana. Because no party
22 knew quite what to expect, the process was poorly planned and managed. U S WEST filed its
23 Montana Application in March 1998 and over 10 months later, still no hearing has been held. In
24 the process, U S WEST responded to thousands of data requests and propounded hundreds of its
25 own on various intervenors. All parties have filed three different phases of prefiled testimony
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1 thereby making much of what was filed in March 1998 along with the initial Application
2 outdated and irrelevant. In other words, the process utilized in Montana has resulted in
3 unnecessary work product, which means unnecessary work and far too much time spent by
4 everyone involved including the Montana Commission and its staff.
5

6 Juxtaposed against our Montana experience is U S WEST's experience in the State of
7 Nebraska. U S WEST filed its Nebraska Application on June 23, 1998 and finished a hearing on
8 the merits on November 20, 1998, just five months later. U S WEST learned quickly from its
9 Montana experience and improved upon it by setting forth a detailed procedural order at the
10 beginning of the 271 process. Despite the apparent efficiencies, U S WEST still believes that the
11 process can be improved because the 271 proceedings are unique in one critical respect: unlike
12 most cases where the facts are stagnant, the facts in a 271 proceeding are always evolving.
13 U S WEST has and will continue to improve its processes and procedures that underlie the
14 checklist; more competitive losses mount each day; new performance data showing that U S
15 WEST satisfies the checklist is generated each month. Thus, testimony can quickly become stale
16 or even outdated. Thus, despite moving quickly in Nebraska, U S WEST was forced to file
17 substantial rebuttal testimony that updated many aspects of its direct testimony. This led once
18 again to unnecessary work for U S WEST, intervenors, the Commission and its staff.
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21 In Arizona, U S WEST seeks to use these experiences to develop a Procedural Order that
22 will eliminate, to the extent possible, the unnecessary work and account for the substantial
23 discovery that is an inherent aspect of the 271 process. As the Commission has no doubt noticed,
24 U S WEST's Arizona Notice of Application does not attach pre-filed direct testimony. As
25 explained before, any testimony filed at this early date would quickly become outdated during
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1 the cumbersome discovery process. Therefore, U S WEST recommends that the overwhelming
2 majority of discovery for all parties to this docket take place – much as a traditional civil case –
3 at the beginning of the case. U S WEST recommends that the parties then jointly file direct
4 testimony, followed by a brief period of focused discovery on unanticipated aspects of the pre-
5 filed testimony. The parties would then jointly file rebuttal testimony followed by a prompt
6 hearing.
7

8 **III. THE SCHEDULE MUST ANTICIPATE DISCOVERY DISPUTES**

9 That leads to the last essential element of the Procedural Schedule. U S WEST's
10 Nebraska experience shows that the schedule simply cannot be too detailed. It is important that
11 it set forth dates for discovery, dates for motions to compel, even dates for oral arguments.
12 Without this level of detail, the process can quickly become unwieldy, and again much like a
13 civil case draw on for years. This must be avoided at all costs. Theoretically, U S WEST's
14 Notice of Application states that it could file for 271 relief with the FCC within 90 days from this
15 date. By statute, the FCC must act on that Application within 90 days; thus, the FCC requires
16 state commissions to comment upon applications within 20 days of the filing. That means, again
17 in theory, that the entire case must be processed and tried within 90 days. Theory aside, U S
18 WEST is committed to working through the process with this Commission; however, Congress
19 drafted Section 271 with a prompt resolution in mind. The Procedural Order should reflect this
20 and force all parties towards a prompt written decision.
21

22 One last thought. The number of data requests that U S WEST has experienced in these
23 271 proceedings is unlike virtually any other regulatory proceeding. In addition, U S WEST
24 proposes utilization of Rule 30(b)(6) depositions and third party subpoenas to ensure that all
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1 relevant facts are placed before this Commission during the hearing process. Thus, this
2 proceeding could easily generate a substantial amount of work for a hearing officer. In
3 Nebraska, the parties to the process jointly retained a retired judge as a "Special Master" to
4 oversee the discovery process. The judge was quite familiar with hearing and resolving
5 discovery disputes and also had the time to devote to the time consuming effort. U S WEST is
6 unsure of workloads for the Commission's hearing officers and simply mentions it as an option
7 worthy of consideration.
8

9 **IV. U S WEST's PROPOSED PROCEDURAL ORDER**

10 With this preface, U S WEST proposes and requests implementation of the following
11 Procedural Order:
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13 **REINITIATE DOCKET**

February 8, 1999 U S WEST Application Filed

14 **PHASE 1**

15 On or before February 17, 1999	All parties to the docket to issue discovery upon opposing parties
16 On or before February 23, 1999	All parties to submit written objections to discovery demands
17 On or before March 1, 1999	All parties to respond to discovery demands
18 March 4, 1999	All parties file Motions to Compel
March 9, 1999	All parties file Responses to Motions to Compel
19 March 12, 1999	All parties file Replies to Responses to Motions to Compel
March 15, 1999	Oral argument re Motions to Compel
20 March 17, 1999	Written decision re Motions to Compel
21 On or before March 24, 1999	All parties complete responses to all discovery questions previously deemed objectionable
22 On or before March 24, 1999	All parties complete Rule 30(b)(6) depositions; all third party subpoenas returned
23 March 31, 1999	All parties submit Direct Testimony

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PHASE 2

April 6, 1999	All parties issue focused discovery upon opposing parties concerning written direct testimony
April 12, 1999	All parties submit written objections, if any, to discovery demands
On or before April 16, 1999	All parties respond to discovery demands
April 23, 1999	All parties submit Rebuttal Testimony

HEARING AND DECISION

May 3, 1999	Hearing begins
May 24, 1999	All parties submit Post-Hearing briefs and Proposed Findings of Fact
On or before June 17, 1999	Commission issues Decision and Findings of Fact

V. CONCLUSION

U S WEST comes to this Commission with substantial 271 experience and, thus, proposes a procedure that adapts to 271's unique aspects while simultaneously moves toward a prompt resolution as envisioned by Congress. U S WEST respectfully requests that the Commission adopt immediately the attached form of order.

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DATED this 8th day of February, 1999.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By 

Vincent C. DeGarlais
Andrew D. Crain
Charles W. Steese
Thomas M. Dethlefs
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2948

FENNEMORE CRAIG, P.C.
Timothy Berg
3003 North Central Ave., Suite 2600
Phoenix, AZ 85012
(602) 916-5421

Attorneys for U S WEST
Communications, Inc.

ORIGINAL and ten copies of
the foregoing filed this 8th day
of February, 1999, with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand
delivered this 8th day of February, 1999,
to:

Christopher Kempley
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

1	Ray Williamson, Acting Director	
2	Utilities Division	
	ARIZONA CORPORATION COMMISSION	
3	1200 West Washington Street	
	Phoenix, Arizona 85007	
4		
5	COPY of the foregoing mailed this	
	8 th day of February, 1998, to:	
6	Michael M. Grant	Penny Bewick
	GALLAGHER AND KENNEDY	Electric Lightwave, Inc.
7	2600 North Central Avenue	4400 NE 77 th Avenue
	Phoenix, Arizona 85004-3020	Vancouver, Washington 98662
8	Attorneys for U S West New Vector Group	
9	Scott Wakefield, Chief Counsel	Thomas L. Mumaw
	Residential Utility Consumer Office	SNELL AND WILMER, L.L.P.
10	2828 North Central Avenue, #1200	One Arizona Center
	Phoenix, Arizona 85004	Phoenix, Arizona 85004-0001
		Attorneys for Brooks Fiber
11	Kath Thomas	Robert Munoz
12	Brooks Fiber Communications	WorldCom, Inc.
	1600 South Amphlett Boulevard, #330	185 Berry Street, Building 1, #5100
13	San Mateo, California 94402	San Francisco, California 94107
	Douglas G. Bonner	Donald A. Low
14	Alexandre B. Bouton	Sprint Communications Company L.P.
	SWIDLER & BERLIN, CHARTERED	8140 Ward Parkway 5E
15	3000 K Street, N.W., Suite 300	Kansas City, Missouri 64114
	Washington, D.C. 20007	
16	Attorneys for GST	
17	Lex J. Smith	Charles Kallenbach
	Michael Patten	American Communications Services, Inc.
18	BROWN & BAIN, P.A.	131 National Business Parkway
	2901 North Central Avenue	Annapolis Junction, Maryland 20701
19	P.O. Box 400	
	Phoenix, Arizona 85001-0400	
20	Attorneys for ACSI, Cox, ELI and TCG	
	Carrington Phillip	Richard Smith
21	Cox Communications, Inc.	Director of Regulatory Affairs
	1400 Lake Hearn Drive, N.E.	Cox Communications
22	Atlanta, Georgia 30319	2200 Powell Street, Suite 795
		Emeryville, California 94608
23	Joe Faber	Deborah S. Waldbaum
	Teleport Communications Group, Inc.	Teleport Communications Group, Inc.
24	1350 Treat Boulevard, #500	201 North Civic Drive, Suite 2100
	Walnut Creek, California 94506	Walnut Creek, California 94596
25		
	Karen L. Clausen	Thomas Campbell
26	Thomas F. Dixon	LEWIS AND ROCA

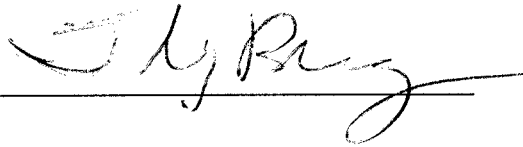
1 MCI Telecommunications Corporation
707 - 17th Street, #3900
2 Denver, Colorado 80202

40 North Central Avenue
Phoenix, Arizona 85004
Attorneys for MCI

3
4 Bill Haas
Richard Lipman
5 McLeod USA
6400 C Street SW
6 Cedar Rapids, Iowa 54206-3177
7 Mary Tribby
Law and Government Affairs
8 AT&T
1875 Lawrence Street, Suite 1575
9 Denver, Colorado 80202

Joyce Hundley
United States Department of Justice
Antitrust Division
1401 H Street, NW, Suite 8000
Washington, D.C. 20530

Joan Burke
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, Arizona 85067-6379

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BEFORE THE ARIZONA CORPORATION COMMISSION

)	Docket No. T-00000B-97-0238
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IN THE MATTER OF U S WEST)	
COMMUNICATIONS, INC.'S)	
COMPLIANCE WITH § 271 OF THE)	ORDER
TELECOMMUNICATIONS ACT OF)	
1996)	
)	
)	

Upon reading U S WEST's Motion for Immediate Implementation of Procedural Order, and upon good cause showing,

IT IS ORDERED adopting the Procedural Schedule for the remainder of this docket:

On or before February 17, 1999	All parties to the docket to issue discovery upon opposing parties
On or before February 23, 1999	All parties to submit written objections to discovery demands
On or before March 1, 1999	All parties to respond to discovery demands
March 4, 1999	All parties file Motions to Compel
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2 April 6, 1999 All parties issue focused discovery upon opposing parties
concerning written direct testimony
3
4 April 12, 1999 All parties submit written objections, if any, to discovery
demands
5 On or before April 16, 1999 All parties respond to discovery demands
6
7 April 23, 1999 All parties submit Rebuttal Testimony
8
9 May 3, 1999 Hearing begins
10
11 May 24, 1999 All parties submit Post-Hearing briefs and Proposed Findings
of Fact
12
13 On or before June 17, 1999 Commission issues Decision and Findings of Fact

14
15 IT IS ALSO ORDERED modifying the Commission's May 27, 1997 order from this
16 docket to the extent it contradicts any aspect of this new Order.

17 Dated this ____ day of _____, 1999.

18 BY THE COMMISSION:

19
20 _____
JIM IRVIN, Chairman

21
22 _____
TONY WEST, Commissioner

23
24 _____
CARL J. KUNASEK, Commissioner
25
26